

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

DETROIT MEDICAL CENTER¹

Employer

and

LESLIE MARTIN POWELL

Case 7-RD-3420

Petitioner

and

**LOCAL 79, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO**

Union

APPEARANCES:

Shaun Ayer, Attorney, of Detroit, Michigan, for the Employer
Leslie Powell, of Detroit, Michigan, pro se
Norman Bomer, of Detroit, Michigan, for the Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

¹ The name of the Employer appears as amended at the hearing

² The parties waived the filing of briefs.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.⁴

All full-time and regular part-time Patient Care Associates (PCA's) employed by the Employer at its facility located at 261 Mack Avenue, Detroit, Michigan, herein called the Rehabilitation Institute of Michigan, but excluding all service and maintenance employees, technical employees, registered nurses, business office clerical employees, skilled maintenance employees, all other contractual workers, guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this day of November 2003.

(SEAL)

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

Classifications
324 2000

³ The hearing officer properly denied the Union's request to litigate the issue of Petitioner's showing of interest. *S.H. Kress & Co.*, 137 NLRB 1244, 1248-1249 (1962). The Board has long held that the showing of interest is a matter for administrative determination and is not litigable by the parties. *Perdue Farms, Inc.*, 328 NLRB 909, 911 (1999), and cases cited.

⁴ The parties stipulated to the appropriate unit and it is identical to the unit set forth in the Certification of Representative that issued in Case 7-RC-22220 on June 10, 2002.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

LOCAL 79, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **November 12, 2003**. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **November 19, 2003**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.